
Investment Business (Exemption) (Miscellaneous) Regulations 2001

Statutory Document No. 333/01

**INVESTMENT BUSINESS ACTS 1991 TO 1993****INVESTMENT BUSINESS (EXEMPTION) (MISCELLANEOUS)
REGULATIONS 2001**

*Approved by Tynwald [12th July 2001]
Coming into operation [1st August 2001]*

In exercise of the powers conferred on the Financial Supervision Commission by sections 2(3) and 20(1) of the Investment Business Act 1991^(a), and of all other enabling powers, after consultation with the Treasury the following Regulations are hereby made:-

Citation and commencement

1. These Regulations may be cited as the Investment Business (Exemption) (Miscellaneous) Regulations 2001 and shall come into operation on 1st August 2001.

Interpretation

2. In these Regulations -

“body corporate” includes a body corporate constituted under the law of the Isle of Man or under the law of a country or territory outside the Isle of Man;

“exempt person” means -

- (a) any open-ended investment company which is a collective investment scheme within the meaning of section 30 of the Financial Supervision Act 1988^(b) and whose business is restricted to that activity;
- (b) any person carrying on an activity prescribed under section 1(2) of the Investment Business Act 1991 whilst acting in the capacity of -
- (i) liquidator or receiver of a company;
 - (ii) receiver, executor or administrator of any estate;
 - (iii) receiver for a patient under the Mental Health Act 1998^(c); or
 - (iv) receiver or trustee in bankruptcy;

(a) 1991 c.18

(b) 1988 c.16

(c) 1998 c.3

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- (c) nominee companies which are wholly owned subsidiaries of -
 - (i) banking institutions licensed under section 6(1) of the Banking Act 1998^(d);
 - (ii) building societies authorised under section 2 of the Building Societies Act 1986^(e) as applied by section 4A of that Act; or
 - (iii) persons licensed under section 3 of the Investment Business Act 1991 but only if that licenceholder is permitted within the conditions attached to its licence to control clients' money or assets;
- (d) nominee companies operated by recognised persons;
- (e) computer bureaux or printers whilst providing mailing services;
- (f) companies incorporated outside the Island which hold a permission under paragraph 23(1) of schedule 1 to the Financial Services Act 1986 (an Act of Parliament);
- (g) any person who acts as a tied agent of a friendly society which is registered under the law of, or any part of, the United Kingdom, but only where the tied agent -
 - (i) does not in the course of his business receive clients' money; and
 - (ii) does not conduct investment business other than arranging deals for or giving advice to existing members of the friendly society or members of organisations associated with that friendly society (for example trade unions); and
 - (iii) does not deal in or give advice on any product which is not offered by the friendly society to which he is tied;
- (h) any person acting under an enduring power of attorney where that power has been registered and the attorney has entered into a discretionary management agreement with a licenceholder or a person authorised under the Financial Services Act 1986 (of Parliament) in respect of any investment business conducted under the power; and
- (i) any person holding bearer instruments of title in safe custody provided that the instruments are removed from the possession of that person by close of business on the business day following the receipt of the instrument;

“investments” has the meaning given by Schedule 2 of the Investment Business Order 1991^(f);

“group” has the meaning given by section 33 (1) of the Banking Act 1998;

(d) 1998 c.4

(e) 1986 c.7

(f) GC 366/91

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“licenceholder” means the holder of a licence under section 3 of the Investment Business Act 1991 or section 6(1) of the Banking Act 1998, or the holder of an authorisation under section 2 of the Building Societies Act 1986 as applied by section 4A of that Act;

“nominee company” means a body corporate whose business consists solely of acting as a bare nominee holding investments or other property;

“recognised person” means a person who has been exempted from section 2 of the Investment Business Act 1991 by regulations made under section 4(1) of that Act;

“wholly owned subsidiary” has the meaning given by section 4 of the Companies Act 1982^(g) and for this purpose “subsidiary” has the meaning given by section 1 of the Companies Act 1974^(h).

Exemptions

3. Section 2(1) of the Investment Business Act 1991 shall not apply to an exempt person if the conditions specified in regulation 4 are complied with.

Conditions

4. The conditions subject to which the exemption is granted are -
- (a) the exempt person must, if he is a member of a professional body, comply with the professional rules of conduct and practice issued or made by that body which are applicable when the exempt person acts in any capacity referred to in sub-paragraphs (i) to (iv) of paragraph (b) of the definition of “exempt person” in regulation 2;
 - (b) paragraph (c) of the definition of “exempt person” in regulation 2 shall apply only in respect of investment business which the nominee company is undertaking solely on behalf of companies which are in the same group as the nominee company and which are licensed or authorised as referred to in sub-paragraph (i) to (iii) of paragraph (c) of that definition;
 - (c) where an exempt person falling within paragraph (c) of the definition of “exempt person” in regulation 2 conducts investment business, that person shall comply with the provisions of the Financial Supervision Commission (Clients’ Investments) Regulatory Code⁽ⁱ⁾ and the Financial Supervision Commission (Clients’ Money) Regulatory Code^(j);

^(g) 1982 c.2

^(h) 1974 c.30

⁽ⁱ⁾ GC 399/91, as amended by GC 98/92 and SD 155/96

^(j) GC 172/93, as amended by SD 155/96

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- (d) exempt persons which fall within paragraph (c) of the definition of “exempt person” in regulation 2 shall arrange for an annual audit report to be sent to the Financial Supervision Commission which shall -
- (i) state whether, in the auditor’s opinion -
- (A) the exempt person has maintained throughout the year systems adequate to enable it to comply with the Financial Supervision Commission (Clients’ Investments) Regulatory Code and the Financial Supervision Commission (Clients’ Money) Regulatory Code and was in compliance with those Codes at the balance sheet date; and
- (B) reconciliations of clients’ money and clients’ investments have been performed in accordance with those Codes; and
- (ii) where one or more of the requirements in respect of which a report is required under head (i) have not been met, the report shall include a statement specifying the relevant requirements and the extent to which they have not been met; or
- (iii) where the auditor is unable to form an opinion as to whether one or more of the requirements in respect of which a report is required under head (i) have been met, the report shall specify those requirements and give the reasons why the auditor has been unable to form an opinion.

Revocation of S.D. 22/98

5. The Investment Business (Exemption) (Miscellaneous) Regulations 1998^(k) are revoked.

Made this day of 2001.

_____ **Chairman**

_____ **Chief Executive**

^(k) SD 22/98

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EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations repeal and replace existing Regulations which provide for certain classes of persons to be exempted from the provisions of section 2 of the Investment Business Act 1991 (i.e. such persons need not hold an investment business licence).

The definition of a nominee company as an exempt person has been amended to state that only a nominee company which is a wholly owned subsidiary of a licenceholder is exempted from requiring an investment business licence, and then only if it is solely undertaking investment business on behalf of that licenceholder or a company which is in the same group as the nominee company and which is also a licenceholder. Additionally exempt persons to whom the Financial Supervision Commission (Clients' Money) Regulatory Code and Financial Supervision Commission (Clients' Investments) Regulatory Code apply are required to provide an auditor's certificate to the Financial Supervision Commission to confirm that the exempt person has complied with the aforementioned codes.